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MAILED

APR 26 2010

OFFICE OF PETITIONS

In re Application of	:	
Danish et al.	:	
Application No. 09/384,303	:	DECISION ON PETITION
Patent No. 6,275,821	:	UNDER 37 C.F.R. § 1.377(b)
Filed: August 26, 1999	:	
Issue Date: August 14, 2001	:	
Attorney Docket Number: 16321-	:	
709	:	
Title: METHOD AND SYSTEM FOR	:	
EXECUTING A GUIDED PARAMETRIC	:	
SEARCH	:	

This is a decision on the petition submitted on October 8, 2009, pursuant to 37 C.F.R. § 1.377(b) to accept and record payment of a maintenance fee. This petition was supplemented via a submission on October 29, 2009.

The present petition is **DISMISSED**.

The above-identified patent issued on August 14, 2001. Thus, the window for paying the 7½-year maintenance fee extended from August 14, 2008 to February 14, 2009 without surcharge, and from February 15, 2009 to August 14, 2009 with a surcharge. Therefore, the grace period for paying the 7½-year maintenance fee provided in 37 C.F.R. § 1.362(e) expired at midnight on August 14, 2009, with no payment received. Accordingly, the patent expired on August 14, 2009 at midnight.

The petition fee has been charged to Petitioner's Deposit Account.

With this petition, Petitioner has asserted that on August 4, 2009, a transmittal letter was submitted to the Office in conjunction with Re-examination proceeding number 90/009,316 (90/009,316 is a re-examination proceeding of 09/384,303), which contained the following authorization:

"[a]t any time during the pendency of this application, please charge any fees required...to Deposit Account 18-0013/40420-0001 pursuant to 37 CFR 1.25."¹

This authorization was included on the bottom of a "transmittal letter for response/amendment," which contained a listing of papers submitted concurrently therewith along with a request to charge \$180 to this same Deposit Account for fees that are associated with the Re-examination Application.

In short, Petitioner submitted a general authorization to charge a Deposit Account commingled with the submission of fees, and this request was made not in the patent, but rather in a re-examination application proceeding that is associated with this patent. Petitioner would have the Office hold this general authorization in the re-examination application proceeding to constitute "notice of timely payment of the required maintenance fee" in the patent.²

This petition cannot be granted, for the following two reasons.

First, the maintenance fee was submitted in a manner this is explicitly prohibited by both the Rules and the Procedures under which this Office operates.

37 C.F.R. § 1.366(e) sets forth, *in pertinent part*:

Maintenance fee payments and surcharge payments relating thereto must (emphasis added) be submitted separate from any other payments for fees or charges, whether submitted in the manner set forth in § 1.23 or by an authorization to charge a deposit account.

¹ The electronic file that is associated with re-examination application number 90/009,316 has been renewed, and this paper has been located therein.

² Petition, page 2.

Similarly, MPEP § 2552 sets forth, *in pertinent part*:

The authorization to charge the deposit account must be submitted within an appropriate window or grace period and must be limited to maintenance fees and surcharges payable on the date of submission.

...

Maintenance fee payments and any surcharges relating thereto must be submitted separately from any other payments for fees or charges, whether submitted in the manner set forth in 37 CFR 1.23 or by authorization to charge a deposit account. See 37 CFR 1.366(e). Maintenance fee payments and surcharge payments relating thereto that are commingled with payments for other fees or charges, e.g., application filing fees, issue fees, document supply fees, etc., will not be accepted. Maintenance fees require processing by a separate area of the Office and are not processed in the same manner as other fees and charges.

Emphases added.

It follows that Patentee's submission of the maintenance fee was undertaken in a manner that is explicitly prohibited by both the C.F.R. and the MPEP: the fee was commingled with the payment of a \$180 fee that is associated with the aforementioned re-examination application. As such, the Office was unable to accept this fee.

Second, the submission was made not in the patent where the maintenance fee and the associated surcharge were due, but rather in the Re-examination application proceeding. Neither the Rules nor the Procedures under which this Office operates contemplate the submission of a maintenance fee and the associated surcharge for a particular patent in the re-examination proceeding that is associated with that patent.

The petition fee of \$200.00 will not be refunded, as this petition was not necessitated by any error on the part of the Office. **The maintenance fee has not been charged to Petitioner's Deposit Account.**

Petitioner may wish to consider submitting a petition pursuant to Rule §§ 1.378(b) and/or (c). Unless Petitioner believes that he can establish that the entire period of

delay in submitting the maintenance fee was unavoidable, he may wish to file pursuant to the unintentional standard.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this patent, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this patent unless Change of Correspondence Address, Patent Form (PTO/SB/123) is submitted for the above-identified patent. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/123), may be found at <http://www.uspto.gov/web/forms/sb0123.pdf>.

A blank fee address form may be found at <http://www.uspto.gov/web/forms/sb0047.pdf>.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.³

/Paul Shanoski/
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³ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.